HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R.No.757 of 2007
Date of decision : 20.02.2007

Jagdish Chand .....Petitioner

versus

Pawan Kumar .....Respondent

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.J.R.Mittal, Senior Advocate with
Mr.Nandan Jindal, Advocate for the petitioner

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ORDER

HEMANT GUPTA, J.

The challenge in the present revision petition is to the order passed by the learned Executing Court on 11.1.2007 whereby the objections filed by the petitioner in respect of execution of the decree dated 9.8.2004, affirmed in appeal on 8.3.2006, were dismissed.

The plaintiff Pawan Kumar filed a suit for permanent injunction restraining the defendant from encroaching upon or blocking in any manner any part of the street or affixing any door or causing any obstruction in the peaceful use and enjoyment of the street. In the said suit, Lok Nath, father of the present petitioner was initially impleaded as defendant No.1, but later on deleted by the plaintiff by making a statement on 2.9.1998. It was the stand of defendant No.2-petitioner in the aforesaid suit that in fact the property is owned by Lok Nath on the basis of a sale deed dated 25.8.1992 and thereafter he has raised construction of the house.

The learned trial Court decreed the suit. The appeal was

dismissed. In execution, the petitioner has denied any obstruction and submitted that it is Lok Nath who is the owner and, therefore, the execution is not maintainable against him. It was also pointed out that a separate suit regarding suit property was filed by the decree holder against Lok Nath which is pending before the competent Court. Therefore, the decree cannot be executed against the petitioner.

The learned Executing Court found that the petitioner has taken all these pleas in the suit. The said pleas were rejected and the suit was decreed. Therefore, in execution, the petitioner cannot be permitted to raise such pleas again.

After hearing the learned counsel for the petitioner, I do not find any illegality or irregularity in the order passed by the learned Executing Court. It could not be disputed that the question of ownership over the property in dispute as that of Lok Nath was raised in the written statement, but the decree was passed on 9.8.2004 and even the appeal was dismissed. Having remain unsuccessful in appeal, the petitioner cannot be permitted to raise the same very pleas in the execution petition to resist the execution of the decree.

I do not find any illegality or irregularity in the order passed by the learned Executing Court which may warrant interference of this Court in exercise of its revisional jurisdiction.

Dismissed.

(HEMANT GUPTA)
JUDGE

February 20, 2007
**mohinder*